

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Patrick Browne	Team: Squad #5	CCRB Case #: 201503225	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/21/2015 10:20 AM	Location of Incident: Inside the 103rd Precinct stationhouse	Precinct: 103	18 Mo. SOL 8/21/2016	EO SOL 8/21/2016	
Date/Time CV Reported Sat, 04/18/2015 10:05 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 04/24/2015 1:03 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Fernandez	25542	950401	103 PCT
2. An officer			103 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Lowez Walker	3443	934251	103 PCT
2. POF Maria Arruza	07397	948629	103 PCT
3. POF Samantha Gill	05636	949028	103 PCT

Officer(s)	Allegation	Investigator Recommendation
A. An officer	Abuse: An officer refused to provide her shield number to § 87(2)(b)	
B. POM Anthony Fernandez	Abuse: PO Anthony Fernandez frisked § 87(2)(b)	
C. POM Anthony Fernandez	Abuse: PO Anthony Fernandez issued a summons to § 87(2)(b)	
§ 87(4-b), § 87(2)(g)		
§ 87(4-b), § 87(2)(g)		

Case Summary

Although a body camera was assigned to one of the officers—PO Maria Arruza of the 103rd Precinct—who witnessed part of this incident, she was not wearing the camera at the time, so no footage was recorded.

At approximately 10:20 a.m. on February 21, 2015, § 87(2)(b) entered the 103rd Precinct stationhouse, located at 168-02 91st Avenue in Queens. § 87(2)(b) was there to pick up his son from the child's mother, § 87(2)(b) as part of their custody arrangement. While signing into the book, an unidentified female officer behind the desk allegedly asked § 87(2)(b) about his son's boots. After further conversation, the other officer behind the desk, identified as Sgt. Lowez Walker of the 103rd Precinct instructed § 87(2)(b) to leave the stationhouse. Before he did so, § 87(2)(b) allegedly requested the unidentified female officer's shield number, though she provided no response whatsoever (**Allegation A**). Instead, Sgt. Walker allegedly repeated for him to leave, so § 87(2)(b) complied and began leaving with his son. However, before he could exit, a security officer identified as PO Anthony Fernandez of the same command stopped him and asked him for his identification. § 87(2)(b) allegedly did not have it on him, so PO Fernandez instructed him to stand against the wall before frisking at least some of his person (**Allegation B**). Without entering his pockets or removing any objects, PO Fernandez obtained § 87(2)(b)'s information verbally and issued him a summons for disorderly conduct in the form of unreasonable noise (**Allegation C**). § 87(4-b), § 87(2)(g)

§ 87(2)(b)

Mediation, Civil and Criminal Histories

- During his in-person statement on May 20, 2015, § 87(2)(b) chose for the case to be mediated. § 87(2)(b)
- § 87(2)(b)
- § 87(2)(b)
- As of August 10, 2015, no notice of claim has been filed with the City of New York regarding this incident (see Board Review #2).

Civilian and Officer CCRB Histories

- PO Fernandez has been a member of the NYPD for four years and has been a subject in three prior CCRB cases involving five FADO allegations, none of which have been substantiated. § 87(2)(g)
- § 87(2)(b) has filed five additional CCRB complaints dating back to 2006 (see Board Review #3). § 87(2)(b)

Potential Issues

§ 87(2)(b) stated that § 87(2)(b) was sitting inside the stationhouse lobby while this incident occurred. However, as they are not together, he did not have any of her contact information. A LexisNexis search revealed an address and telephone number for § 87(2)(b) though the number belonged to an unidentified man who claimed not to know her and a please call letter mailed to the address went unanswered. As of the date of this report, § 87(2)(b) has not contacted the CCRB to provide a statement.

Findings and Recommendations

Explanation of Subject Officer Identification

§ 87(2)(b) identified the officer who failed to provide her shield number upon request as a 25 to 30-year-old uniformed white female with a thin build and shoulder length blond hair. § 87(2)(b) also stated that this officer walked into the stationhouse in the midst of a separate incident on April 18, 2015, § 87(2)(b). At that time, the officer was in plainclothes and looked as though she were just arriving for duty.

Neither Sgt. Walker nor PO Fernandez recalled the other officer working at the desk that day, nor did they recall hearing any request for her shield number. According to the tour 2 roll call on February 21, 2015 (see Board Review #4), there were three female officers with stationhouse assignments: PO Omega Walker (stationhouse clerk), PO Maria Arruza (telephone switchboard operator), and PO Samantha Gill (new arrest paperwork). Although the first two would have been positioned at or near the front desk, PO Walker is black and PO Arruza is Hispanic with dark brown-hair (see Board Review #5), so neither matches § 87(2)(b)'s description. Given their light skin tones, both PO Gill and PO Arruza were both interviewed. PO Gill (see Board Review #6), who also has brown hair (see Board Review #7), maintained that she worked in plainclothes completing arrest paperwork on the second floor of the stationhouse for her entire tour, which is corroborated by her memo book (see Board Review #8), and that she knew nothing about the incident. Additionally, according to the tour 1 roll call on April 18, 2015 (see Board Review #9), PO Gill worked until 10:35 a.m., though she maintained that she did not recognize § 87(2)(b) or encounter him while passing through the stationhouse lobby that day.

Meanwhile, PO Arruza maintained that on February 21, 2015, she was actually not the telephone switchboard operator but was instead assigned to the 124 Room where civilians file complaints, an assignment which was noted in her memo book (see Board Review #10). Although she stated that she did not know which officer was with Sgt. Walker at the front desk or have any knowledge of § 87(2)(b)'s request for the officer's shield number, she did witness a brief part of the incident because she exited the 124 room when she heard § 87(2)(b) yelling. When asked about female officers with blond hair, PO Arruza could identify only PO Theresa Callahan, who was on vacation that day according to both her memo book (see Board Review #11) and the roll call. According to her memo book on April 18, 2015 as well as tours 1 and 2 roll calls from the same day (see Board Review #12), PO Arruza was not working.

§ 87(2)(b) was scheduled to appear for officer photo viewings on June 24, 2015, June 29, 2015, and July 28, 2015. However, he cancelled the first and third appointments while failing to appear for second without calling in advance to reschedule. § 87(2)(g)

§ 87(2)(g)

Allegation A—Abuse of Authority: An officer refused to provide her shield number to

§ 87(2)(b)

§ 87(2)(g)

Allegation B—Abuse of Authority: PO Anthony Fernandez frisked § 87(2)(b)

It is undisputed that before leaving the stationhouse, PO Fernandez stopped § 87(2)(b) and frisked at least part of his body, though no objects were recovered. § 87(2)(b) (see Board Review #13) stated that prior to that point, he had not yelled or raised his voice, though he acknowledged that Sgt. Walker did instruct him to leave the stationhouse more than once and that the summons he received (see Board Review #14) was for unreasonable noise.

Conversely, PO Fernandez (see Board Review #15) stated that throughout the incident and despite multiple commands from both himself and Sgt. Walker to leave the stationhouse, § 87(2)(b) refused to do so and instead yelled, cursed, and gesticulated aggressively with his hands. PO Fernandez also maintained that immediately prior to the frisk, § 87(2)(b) had his hands in his pockets and refused to take them out despite multiple requests from PO Fernandez to remove them. PO Fernandez stated that given his refusal to show his hands, he suspected § 87(2)(b) may be in possession of a weapon, so he frisked him to ensure officer safety. However, PO Fernandez acknowledged that he had no other specific reason to suspect that § 87(2)(b) was armed, such as observations of any threatening movements or visible bulges on his person.

Both Sgt. Walker (see Board Review #16) and PO Arruza (see Board Review #17) corroborated that § 87(2)(b) yelled throughout this incident, the latter of whom exited the 124 room on account of the noise. Neither Sgt. Walker nor PO Arruza observed PO Fernandez frisk § 87(2)(b) as it took place in a front vestibule beyond a set of doors but still in the building. Sgt. Walker had no reason to suspect that § 87(2)(b) was armed, while PO Arruza did not recall any further details.

In order to frisk an individual, an officer must have reasonable suspicion to believe either that the individual is in possession of a weapon or, in the case of a lawful detainment, that he is in danger of physical injury by virtue of the detainee being armed. People v. DeBour, 40 N.Y.2d 210 (1976) (see Board Review #18). Furthermore, the mere fact that an individual has his hands in his pockets would not provide reasonable suspicion to believe that he is armed or dangerous. People v. Burnett, Lexis #2631 (2015) (see Board Review #19).

§ 87(2)(g)

§ 87(2)(g)

Allegation C—Abuse of Authority: PO Anthony Fernandez issued a summons to § 87(2)(b)

It is undisputed that PO Fernandez issued a summons to § 87(2)(b) for disorderly conduct in the form of unreasonable noise inside the 103rd Precinct stationhouse. Although § 87(2)(b) denied yelling and cursing in the stationhouse lobby, PO Fernandez, PO Arruza, and Sgt. Walker all maintained that he was. Police stationhouses are not considered to be public space but are instead the property of the NYPD.

A person is guilty of Penal Law §240.20(2) when he makes unreasonable noise with intent to cause public inconvenience, annoyance, or alarm, or recklessly creates a risk thereof (see Board Review #20). A summons is considered to be retaliatory only when it is issued without a good faith belief that the violation had occurred (Police Dept. v. Cerny, OATH Index No. 1682/01) (see Board Review #21).

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g) [Redacted]
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[Redacted]

Squad: _____

Investigator: _____
Signature Print Date

Pod Leader: _____
Title/Signature Print Date

Attorney: _____
Title/Signature Print Date